

1 BRYAN A. MERRYMAN (SBN 134357)
bmerryman@whitecase.com
2 J. JONATHAN HAWK (SBN 254350)
jhawk@whitecase.com
3 WHITE & CASE LLP
633 W. Fifth Street, Suite 1900
4 Los Angeles, CA 90071-2007
Telephone: (213) 620-7700
5 Facsimile: (213) 452-2329

6 BIJAL V. VAKIL (SBN 192878)
bvakil@whitecase.com
7 WHITE & CASE LLP
5 Palo Alto Square, 9th Floor
8 3000 El Camino Real
Palo Alto, CA 94306
9 Telephone: (650) 213-0300
Facsimile: (650) 213-8158

10 Attorneys for Defendant
11 GROUPME, INC.

12 UNITED STATES DISTRICT COURT
13 NORTHERN DISTRICT OF CALIFORNIA
14 OAKLAND DIVISION

15 BRIAN GLAUSER, individually and on behalf
of a class of similarly situated individuals,

16 Plaintiffs,

17 v.

18 TWILIO, INC., a Delaware corporation; and
19 GROUPME, INC., a Delaware corporation,

20 Defendants.
21
22
23
24
25
26
27
28

Case No. 4:11-cv-02584-PJH

**DEFENDANT GROUPME, INC.'S
ANSWER TO FIRST AMENDED
CLASS ACTION COMPLAINT**

ANSWER

Defendant GroupMe, Inc. ("GroupMe") hereby answers the First Amended Class Action Complaint ("FAC") filed by plaintiff Brian Glauser ("Plaintiff"). GroupMe denies any allegation not expressly and unequivocally admitted.

1. GroupMe admits Plaintiff filed the FAC. GroupMe lacks information or belief sufficient to answer the remaining allegations in paragraph 1 of the FAC and, on that basis, denies them.

2. GroupMe lacks information or belief sufficient to answer the allegations in paragraph 2 of the FAC and, on that basis, denies them.

3. GroupMe lacks information or belief sufficient to answer the allegations in paragraph 3 of the FAC and, on that basis, denies them.

4. GroupMe admits it is a Delaware corporation, with its headquarters located in New York, New York 10011, and it does business throughout the U.S.

5. GroupMe admits the Court has subject matter jurisdiction over this action.

6. The allegations in paragraph 6 of the FAC are legal conclusions to which no response is required. To the extent any response is required, GroupMe lacks information or belief sufficient to answer the allegations in paragraph 6 of the FAC and, on that basis, denies them.

7. GroupMe lacks information or belief sufficient to answer the allegations in paragraph 7 of the FAC and, on that basis, denies them.

8. GroupMe admits "Short Message Service" ("SMS") protocol limits the maximum length of a text message to 160 characters. The allegations in the last sentence of paragraph 8 are legal conclusions to which no response is required. GroupMe lacks information or belief sufficient to answer the remaining allegations in paragraph 8 of the FAC and, on that basis, denies them.

9. GroupMe lacks information or belief sufficient to answer the allegations in paragraph 9 of the FAC and, on that basis, denies them.

10. GroupMe admits it offers a group text messaging service. GroupMe lacks

1 information or belief sufficient to answer the remaining allegations in paragraph 10 of the FAC
2 and, on that basis, denies them.

3 11. GroupMe admits it offers a group text messaging service. GroupMe denies the
4 remaining allegations in paragraph 11 of the FAC.

5 12. GroupMe admits group creators may sign up to use GroupMe's text messaging
6 service through GroupMe's website or the GroupMe application. GroupMe further admits, in
7 April 2011, a group creator could add up to twenty-four individuals to a GroupMe group by,
8 among other steps, entering the phone numbers of the individuals the group creator wanted to
9 invite to join the group. GroupMe lacks information or belief sufficient to answer the remaining
10 allegations in paragraph 12 of the FAC and, on that basis, denies them.

11 13. GroupMe denies the allegations in paragraph 13 of the FAC.

12 14. GroupMe denies the allegations in paragraph 14 of the FAC.

13 15. GroupMe admits its group text messaging service enables group members to
14 exchange text messages with other group members. GroupMe lacks information or belief
15 sufficient to answer the remaining allegations in paragraph 15 of the FAC and, on that basis,
16 denies them.

17 16. GroupMe admits a group member may be removed from a GroupMe group if he
18 or she does not respond to text messages. GroupMe lacks information or belief sufficient to
19 answer the remaining allegations in paragraph 16 of the FAC and, on that basis, denies them.

20 17. GroupMe admits Twilio plays a role in the delivery of some text messages sent
21 by members of GroupMe groups. GroupMe lacks information or belief sufficient to answer the
22 remaining allegations in paragraph 17 of the FAC and, on that basis, denies them.

23 18. GroupMe admits Twilio plays a role in the delivery of some text messages sent
24 by members of GroupMe groups. GroupMe lacks information or belief sufficient to answer the
25 remaining allegations in paragraph 18 of the FAC and, on that basis, denies them.

26 19. GroupMe lacks information or belief sufficient to answer the allegations in
27 paragraph 19 of the FAC and, on that basis, denies them.

28 20. GroupMe lacks information or belief sufficient to answer the allegations in

1 paragraph 20 of the FAC and, on that basis, denies them.

2 21. GroupMe lacks information or belief sufficient to answer the allegations in
3 paragraph 21 of the FAC and, on that basis, denies them.

4 22. GroupMe lacks information or belief sufficient to answer the allegations in
5 paragraph 22 of the FAC and, on that basis, denies them.

6 23. GroupMe lacks information or belief sufficient to answer the allegations in
7 paragraph 23 of the FAC and, on that basis, denies them.

8 24. GroupMe denies the allegations in the first sentence of paragraph 24 of the FAC.
9 GroupMe lacks information or belief sufficient to answer the remaining allegations in paragraph
10 24 of the FAC and, on that basis, denies them.

11 25. GroupMe denies the allegations in paragraph 25 of the FAC.

12 26. GroupMe denies the allegations in paragraph 26 of the FAC.

13 27. GroupMe denies the allegations in paragraph 27 of the FAC.

14 28. GroupMe denies the allegations in paragraph 28 of the FAC.

15 29. GroupMe denies the allegations in paragraph 29 of the FAC.

16 30. GroupMe denies the allegations in paragraph 30 of the FAC.

17 31. GroupMe lacks information or belief sufficient to answer the allegations in
18 paragraph 31 of the FAC and, on that basis, denies them.

19 32. GroupMe admits long code 804-742-4986 was used in connection with text
20 messages transmitted in April 2011. GroupMe lacks information or belief sufficient to answer
21 the remaining allegations in paragraph 32 of the FAC and, on that basis, denies them.

22 33. GroupMe denies the allegations in paragraph 33 of the FAC.

23 34. GroupMe denies the allegations in paragraph 34 of the FAC.

24 35. GroupMe lacks information or belief sufficient to answer the allegations in
25 paragraph 35 of the FAC and, on that basis, denies them.

26 36. GroupMe denies the allegations in paragraph 36 of the FAC.

27 37. GroupMe lacks information or belief sufficient to answer the allegations in
28 paragraph 37 of the FAC and, on that basis, denies them.

1 38. GroupMe lacks information or belief sufficient to answer the allegations in
2 paragraph 38 of the FAC and, on that basis, denies them.

3 39. GroupMe denies the allegations in the first sentence in paragraph 39 of the FAC.
4 GroupMe lacks information or belief sufficient to answer the remaining allegations in paragraph
5 39 of the FAC and, on that basis, denies them.

6 40. GroupMe denies the allegations in paragraph 40 of the FAC.

7 41. GroupMe denies the allegations in paragraph 41 of the FAC.

8 42. GroupMe denies the allegations in paragraph 42 of the FAC.

9 43. GroupMe admits Plaintiff filed the FAC. The remaining allegations in paragraph
10 43 of the FAC are legal conclusions to which no response is required. To the extent any
11 response is required, GroupMe lacks information or belief sufficient to answer the allegations in
12 paragraph 43 of the FAC and, on that basis, denies them.

13 44. GroupMe admits Plaintiff filed the FAC. The remaining allegations in paragraph
14 44 of the FAC are legal conclusions to which no response is required. To the extent any
15 response is required, GroupMe lacks information or belief sufficient to answer the allegations in
16 paragraph 44 of the FAC and, on that basis, denies them.

17 45. GroupMe admits Plaintiff filed the FAC on behalf of himself and putative classes
18 as defined in paragraph 45 of the FAC. GroupMe lacks information or belief sufficient to
19 answer the remaining allegations in paragraph 45 of the FAC and, on that basis, denies them.

20 46. GroupMe lacks information or belief sufficient to answer the allegations in
21 paragraph 46 of the FAC and, on that basis, denies them.

22 47. GroupMe denies the allegations in paragraph 47 of the FAC.

23 48. GroupMe denies the allegations in paragraph 48 of the FAC.

24 49. GroupMe denies the allegations in paragraph 49 of the FAC.

25 50. GroupMe denies the allegations in paragraph 50 of the FAC.

26 51. GroupMe denies the allegations in paragraph 51 of the FAC.

27 52. GroupMe denies the allegations in paragraph 52 of the FAC.

28 53. GroupMe denies the allegations in paragraph 53 of the FAC.

1 54. GroupMe incorporates by reference its responses to paragraphs 1-53.
2 55. GroupMe denies the allegations in paragraph 55 of the FAC.
3 56. GroupMe denies the allegations in paragraph 56 of the FAC.
4 57. GroupMe lacks information or belief sufficient to answer the allegations in
5 paragraph 57 of the FAC and, on that basis, denies them.

6 58. GroupMe denies the allegations in paragraph 58 of the FAC.

7 59. GroupMe denies the allegations in paragraph 59 of the FAC.

8 GroupMe denies Plaintiff and/or the putative classes are entitled to any relief.

9 **AFFIRMATIVE DEFENSES**

10 GroupMe alleges the following separate and additional defenses and objections. By
11 pleading these objections, GroupMe does not, in any way, agree or concede it has the burden of
12 proof or persuasion on any of these issues. GroupMe reserves the right to assert additional
13 defenses and objections in the event discovery or further investigation demonstrates any such
14 defenses or objections are appropriate or applicable.

15 **FIRST AFFIRMATIVE DEFENSE**
16 **(Failure to State a Claim)**

17 The FAC fails to allege facts sufficient to state a claim against GroupMe.

18 **SECOND AFFIRMATIVE DEFENSE**
19 **(Prior Express Consent)**

20 GroupMe received prior express consent to contact Plaintiff and/or all proposed
21 members of the putative classes.

22 **THIRD AFFIRMATIVE DEFENSE**
23 **(No Use of Automatic Telephone Dialing System)**

24 GroupMe did not use an automatic telephone dialing system in sending the alleged text
25 messages.

26 **FOURTH AFFIRMATIVE DEFENSE**
27 **(Lack of Injury)**

28 Plaintiff and/or all proposed members of the putative classes have not suffered any injury or
damages as a result of the conduct alleged.

//

1 **FIFTH AFFIRMATIVE DEFENSE**
2 **(Statute of Limitations)**

3 The relief requested in the FAC is barred, in whole or in part, by the applicable statute of
4 limitations, including 28 U.S.C. § 1658(a).

5 **SIXTH AFFIRMATIVE DEFENSE**
6 **(Emergency Calls)**

7 Text messages sent by proposed members of the putative classes were sent for emergency
8 purposes.

9 **SEVENTH AFFIRMATIVE DEFENSE**
10 **(Arbitration)**

11 When Plaintiff and/or each member of the putative classes consented to be called by
12 GroupMe, he or she also agreed to submit the claims alleged in the FAC to arbitration.

13 **EIGHTH AFFIRMATIVE DEFENSE**
14 **(Standing)**

15 Plaintiff's claims are barred because he lacks standing to maintain them.

16 **NINTH AFFIRMATIVE DEFENSE**
17 **(No Willful or Knowing Conduct)**

18 Plaintiff's claims for treble damages are barred because GroupMe did not engage in
19 willful or knowing misconduct.

20 **TENTH AFFIRMATIVE DEFENSE**
21 **(Acts of Third Parties)**

22 The alleged damages, if any, were caused, in whole or in part, by the acts or omissions of
23 unnamed third parties for whose conduct GroupMe is not responsible.

24 **ELEVENTH AFFIRMATIVE DEFENSE**
25 **(Due Process/Equal Protection)**

26 Any alleged claim for punitive damages and/or penalties (including statutory penalties or
27 interest) violates the Due Process and Equal Protection Clauses of the United States Constitution,
28 Amendment XIV.

TWELFTH AFFIRMATIVE DEFENSE
(Reasonable Practices)

GroupMe has established and implemented, with due care, reasonable practices and
procedures to effectively prevent the text messages allegedly in violation of the TCPA.

1 **THIRTEENTH AFFIRMATIVE DEFENSE**
2 **(Estoppel)**

3 Plaintiff's claims are barred, in whole or in part, by the doctrine of estoppel.

4 **FOURTEENTH AFFIRMATIVE DEFENSE**
5 **(Waiver)**

6 Plaintiff's claims are barred, in whole or in part, by the doctrine of waiver.

7 **FIFTEENTH AFFIRMATIVE DEFENSE**
8 **(Failure to Mitigate Damages)**

9 Plaintiff's claims are barred, in whole or in part, as a result of his failure to mitigate his
10 alleged damages, if any.

11 **SIXTEENTH AFFIRMATIVE DEFENSE**
12 **(Adequate Remedies)**

13 To the extent the FAC seeks equitable relief against GroupMe, Plaintiff's claims are
14 barred because he has adequate remedies at law.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, GroupMe prays for judgment as follows:

- 17 1. Plaintiff takes nothing by the FAC, and judgment be entered against Plaintiff and
18 in favor of GroupMe;
19 2. The Court award GroupMe its costs of suit; and
20 3. Such other and further relief as this Court deems just and proper.

21 Dated: April 17, 2014

WHITE & CASE LLP

22 By: /s/ Bryan A. Merryman
Bryan A. Merryman

23 Attorneys for Defendant
24 GROUPME, INC.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

I am employed in the County of Los Angeles in California. I am over the age of eighteen years and am not a party to this action. My business address is 633 West Fifth Street, Suite 1900, Los Angeles, California, 90071. On April 17, 2014, I served the document titled:

to all named counsel of record via the ECF (Electronic Case Filing) system of the United States District Court for the Northern District of California. All counsel of record are required to be registered e-filers and, as such, are automatically e-served with a copy of the documents upon confirmation of e-filing.

I certify under penalty of perjury under the laws of the state of California and the United States that the foregoing is true and correct.

/s/ Bryan A. Merryman
Bryan A. Merryman